

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 711 OF 2003

WITH

WRIT PETITION NO. 712 OF 2003

WITH

WRIT PETITION NO. 717 OF 2003

WITH

WRIT PETITION NO. 718 OF 2003

WITH

WRIT PETITION NO. 719 OF 2003

WRIT PETITION NO. 711 OF 2003

M/s. Paranjpe Builders

Pvt. Ltd.,

.... Petitioner.

vs.

Babulal Khimji Shah & Anr.

.... Respondents.

Mr. G.R. Rege with S.M. Railkar for Petitioner.

Mr. G.V. Nagarsheth for R.No.1.

WRIT PETITION NO. 712 OF 2003

M/s. Paranjpe Builders

Pvt. Ltd.,

.... Petitioner.

vs.

Babulal Khimji Shah & Anr. Respondents.

Mr. G.R. Rege with S.M. Railkar for Petitioner.

Mr. G.V. Nagarsheth for R.No.1.

WRIT PETITION NO. 717 OF 2003

M/s. Paranjpe Builders

Pvt. Ltd., ... Petitioner.

vs.

Babulal Khimji Shah & Anr. Respondents.

Mr. G.R. Rege with S.M. Railkar for Petitioner.

Mr. G.V. Nagarsheth for R.No.1.

WRIT PETITION NO. 718 OF 2003

M/s. Paranjpe Builders

Pvt. Ltd., ... Petitioner.

vs.

Babulal Khimji Shah & Anr. Respondents.

Mr. G.R. Rege with S.M. Railkar for Petitioner.

Mr. G.V. Nagarsheth for R.No.1.

WRIT PETITION NO. 719 OF 2003

M/s. Paranjpe Builders

Pvt. Ltd., ... Petitioner.

vs.

Babulal Khimji Shah & Anr.

.... Respondents.

Mr. G.R. Rege with S.M. Railkar for Petitioner.

Mr. G.V. Nagarsheth for R.No.1.

Coram: J.N. PATEL, J.

Date : 26th July, 2006.

P.C.

. Heard the learned counsel for the petitioner (original defendant no. 2) and learned counsel for the respondent (original defendant no. 1). All these petitions have been filed by the petitioner (original defendant no. 2) who is the appellant before the District Court at Palghar, District Thane. It appears that initially original defendant no. 1 preferred an appeal joining the petitioner (original defending no. 2) as respondent. Thereafter the petitioner's name was sought to be deleted. Because of this, the petitioner was required to prefer a separate appeal in the matter aggrieved by the decision of the trial Court along with an application for condonation of delay which was registered as Misc. Application and the Additional District Judge, Palghar condoned the delay on the condition of payment of costs and deposit of decretal amount with costs and interest in all the decrees within one month from the date of the said order.

2. The petitioner is aggrieved by the fact that he has been directed to deposit the decretal amount with costs and interest which is the issue raised by him in appeal to be decided on merits and, therefore, such a condition should not have been imposed by the lower appellate court.

3. It has been pointed out by the learned counsel appearing for the petitioner that the respondent no. 1 (original defendant no. 1) has already deposited decretal amount with costs and interest in the trial Court pursuant to the order passed in the appeals filed by him.

4. In this view of the matter, the condition imposed by the appellate court condoning the delay directing the petitioner to deposit the decretal amount with costs and interest is without any justification.

5. The learned counsel appearing for respondent no. 1 submits that in his appeal one of the issues which the respondent no. 1 (original defendant no. 1) is contesting i.e. that the petitioner wants the decree to be satisfied by respondent no. 1 i.e. original defendant no. 1. This is a subject matter of the appeal which will have to be decided on merits by the appellate court. Therefore, in the opinion of this Court, it is not necessary that other respondents be

heard in the matter as they were not aggrieved by the impugned order condoning the delay and have not challenged the same. Therefore, this Court modifies the impugned order by deleting the condition that the petitioner will deposit the decretal amount with costs and interest in all the aforesaid decrees.

6. Shri Rege, the learned counsel appearing for the petitioner, submits that he would comply with the condition of payment of costs awarded in the suit within a period of six weeks from the date of passing of this order. All the petitions stand disposed of accordingly with no order as to costs.

7. The petitioner to communicate this order to the appellate court and comply with the condition of depositing costs within the stipulated period otherwise the petition would stand dismissed without any further reference to this Court. Needless to say that on depositing costs in all the appeals, the appeals preferred by the petitioner will be registered and listed by the appellate court and taken up for hearing in accordance with law. The petitioner shall also give notice of this order to the other respondents. Hamdust allowed.

(J.N. Patel, J.)